IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1533 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

HEIRS OF N D THAKORE ANANDKUVARBA NATWARSINH

Versus

GAJANANDRAO RAMRAO YAVALE

Appearance:

MR PR THAKKAR for Petitioners

MR SD PATEL for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21/07/98

ORAL JUDGEMENT

1. This is tenant's revision under Section 29(2) of the Bombay Rent Act, 1947 (for short "the Act").

2. The respondent had let out the disputed premises at Rs.8.50 ps. per month besides electricity charges. He fell in arrears of rent with effect from 1.9.1975. Notice

of demand was served, but the rent was not paid within a month of service of notice of demand. Eviction was sought on this ground. Another ground for tenant's eviction was that he did not use the suit premises continuously for six months immediately before institution of the Suit. The third ground was that the premises was reasonably and bonafide required by the landlord for his own occupation. Accordingly the Suit for eviction, recovery of arrears of rent and mesne profit was filed.

3. The revisionist contested the Suit on the ground that no rent was due from him and that the rent was sent by Money Order after receipt of notice which was refused by the respondent landlord. The other two grounds for eviction were also denied by him and he maintained that he wasusing the suit accommodation for his residence and that the suit accommodation was not bonafide and reasonably required by the landlord.

4. The trial Court did not find force in the landlord's plea of eviction on ground of failure of tenant to pay more than six months rent and also that the premises was bonafide required by him. However, on ground of non-user of the premises for continuous period of six months before institution of the suit decree for possession was passed.

5. An Appeal was preferred by the revisionist which was dismissed. Hence this revision.

6. The finding of the two courts below that the tenant was not in arrears of more than six months rent and that the premises was not bonafide and reasonably required by the landlord for his personal use do not require any interference in this revision inasmuch as concurrent findings have been recorded on these two questions by the two courts below and that too after properly appreciating the evidence on record.

7. The only point for determination in this revision is whether the Decree for eviction on ground of non-user of the premises by the tenant for continuous period of six months before institution of the Suit is in accordance with law. The learned Counsel for the revisionist contended that the findings recorded by the lower Appellate Court is contrary to law on two grounds. Firstly the lower Appellate Court has wrongly placed onus of proof on the tenant and secondly his evidence has been mis-read by the lower Appellate Court as a result of which perverse finding has been recorded by the lower Appellate Court.

8. Section 13(1)(k) of the Act provides that a landlord shall be entitled to recover possession of any premises if the court is satisfied that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceeding the date of the Suit.

9. The onus to prove that the premises was not so used by the tenant certainly lies on the landlord and the onus cannot be shifted on the tenant. The landlord can not take advantage of the weakness of the defendant in such matters. The case of Shah Occhavlal Motilal V/s. Kansara Dhanlaxmi Becharlal, reported in 1986 GLH 389 was rightly referred to by the learned Counsel for the revisionist on this point. However, this case is distinguishable because on facts it was found that the plaintiff had no personal knowledge whatsoever regarding non-user by the defendnt. In the case under consideration before me it is positive evidence of the plaintiff that he used to come between 20 to 25 times a year to Vadodara where the property is situated and always he found the premises locked and this was seen by him for the last four years. It is true that the landlord resides at Ahmedabad, but it is also clear from the evidence that he used to go to Vadodara at least twice a month and always he found the premises locked. It is in evidence that the tenant had large family consisting of himself, wife and as many as seven sons. No son is residing at Vadodara. It is not the case of the tenant revisionist that he was continuously residing at Vadodara in the suit premises. On the other hand the evidence is that he is residing at another house at Singhrod which is at a distance of 9 k.mtrs. from Vadodara. He made attempt to examine two witnesses in support of his case. The courts below did not believe the statement of the defendant's witness. The Court below also observed that the ration card of the revisionist is from Singhrod. His name finds figure in the voter's list from Singhrod. The notice in Suit was served on him at Singhrod and summons of the Suit was also served on him at Singhrod. All these factors will show that at all relevant time the tenant was residing at Singhrod and not in the disputed premises. It is not a case where wrong onus of proof was laid upon the tenant by the two courts below. The landlord has given evidence that whenever he went to Vadodara he found the disputed premises locked for the last four years. This could be rebutted by the defendant inasmuch as he is in possession of best evidence, viz. ration card, voter's list, etc. The letter received by him at this address according to

himself is in his possession, but these documents were not filed. If a person is in possession of best evidence to rebut the statement of the plaintiff, but fails to file the same, adverse inference can be drawn that if those papers would have been filed they would not have supported the case of the defendant. Thus, as a matter of fact adverse inference was drawn against the defendant and not that wrong onus of proof was laid upon the defendant. The first ground, therefore, cannot be accepted.

10. The second ground raised by the learned Counsel for the revisionist is that the finding is perverse. Thelearned Counsel for the respondent contended that it is a case of concurrent finding of fact recorded by the two courts below. Hence the High Court in revision will not re-assess the evidence and substitute its own view. It was also contended that if two views are possible from the evidence on record and one view was taken concurrently by the two courts below the High Court will not, in revision, substitute the second view which may be possible from the evidence on record. The contention can very well be accepted. However, when there is contention from the side of the revisionist that the finding is perverse and is the result of mis-reading of evidence the revisional court is not prohibited from looking to the evidence so as to conclude whether it is a case of misreading of evidence or not. If the finding is recorded on misreading of evidence it certainly becomes perverse finding be the capable of interference in revision.

11. I have gone through the evidence on record, viz. oral evidence on the side of the defendant with this limited angle. Babubhai is one of the witnesses of the defendant. The lower Appellate Court has disbelieved him on the ground that he has supported the case of the plaintiff. His examination in chief is very short. He admitted that the defendant resides at Singhrod. He stated that his brother and sons come to the suit house and some time they reside. He could not say how many time they come in a week. An important statement was made by him in examination in chief that "I can not say whether the Suit premises remained closed continuously for last four years". This material statement is incapableof demolishing the plaintiff's case; rather it amounts to ignorance of the witness and lends support to the plaintiff's case. The vague statement that the defendant's brother and sons come casually to reside in the suit house is not the ground for holding that the premises was continuously used for six months before

institution of the Suit. The relevant period was continuous period of six months prior to the institution of the Suit and on this point no specific evidence was given by this witness. It has also come in his statement that the landlord respondent has filed a Suit for eviction against him and he is tenant of the same landlord. The possibility, therefore, that he had come to oblige the tenant on this ground cannot be ruled out.

12. The other witness is Dattatray. His statement in examination in chief is vague statement of general nature. He is interested with the cause of the defendant inasmuch as he has relation with the defendant since 40 years. He too has admitted that the defendant has his own house at Singhrod, which is double storied house. After going through his entire statement I am also of the view that he has not fully supported the case of the defendant.

13. In the result it is not a case of misreading of evidence by the two courts below which has rendered the finding perverse. The findings recorded by the two courts below are based on proper appreciation of evidence on record. Hence no interference in revision is permissible. The revision is thus devoid of merit and is liable to fail. The revision is accordingly dismissed. No order as to costs.

14. The revisionist is permitted to vacate the premises within a period of three months from today on his filing usual undertaking in this Court within two weeks from today. sd/-

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